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Supreme Court of the United States

OCTOBER TERM, 1941

No. 1014

CHARLES B. RAYNER, *Petitioner*

vs.

UNITED NORTH & SOUTH DEVELOPMENT COMPANY

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

JOHN W. STAYTON
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Counsel for Petitioner.

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Of Counsel.

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MAY IT PLEASE THE COURT:

Respondent makes the point in its "Brief in Opposition to Petition for Certiorari" that the taking of an appeal on a cost bond by the Commonwealth of Massachusetts in the garnishment proceeding kept its garnishment writ alive, and that as a consequence respondent could not transfer petitioner's stock.

There are two reasons why respondent's contentions with respect to the garnishment proceeding are untenable.

Petitioner and respondent were parties to the garnishment proceeding, and the agreed judgment entered in that proceeding specifically provided that the stock pledged to petitioner by Davis and petitioner's rights to such stock were released from, and not affected by, and should not thereafter be affected by, the garnishment proceeding.

On February 10, 1940, pursuant to a hearing on October 24, 1939, judgment was entered quashing the writ of garnishment issued on behalf of the Commonwealth of Massachusetts in the garnishment proceeding brought by it against respondent to impound Davis' stock in respondent. The judgment also discharged the garnishee. (R. 120-123.) That judgment further provided:

"Thereupon came on for disposition the answers and interventions of J. E. Mowinckle, Magnolia Petroleum Company, W. F. Peale, Mrs. S. H. Rabon, Dr. J. W. Nixon, *C. B. Rayner*, Central Power & Light Company, Home National Bank of Brockton, Massachusetts and Brockton National Bank, of Brockton, Massachusetts, cross defendants impleaded herein by the United North & South Development Company, garnishee, and who have appeared and filed answers and interventions herein, and all of said cross defendants and interveners announced in open Court that in view of the fact that the garnishment had been quashed, they did not desire to further prosecute any of such interventions and answers and asked that all such interventions and answers filed herein and the causes of action therein asserted be dismissed without prejudice to any rights they may have against either the intervener, Edgar B. Davis, or the plaintiff, Commonwealth of Massachusetts or the garnishee United

North & South Development Company; to which the Commonwealth of Massachusetts, the United North & South Development Company, a corporation, and Edgar B. Davis, by their respective counsel, and all of the other parties to this action, by their respective counsel, in open Court agreed.

"It is, accordingly, Ordered, Adjudged and Decreed that all of said interventions and answers of the said interveners and cross defendants herein and the causes of action therein asserted be, and they are hereby, dismissed, but this dismissal is without prejudice to any rights or claim any of said interveners and cross defendants have against intervener, Edgar B. Davis, or the plaintiff, Commonwealth of Massachusetts or the garnishee United North & South Development Company, and shall not constitute an adjudication thereof, and shall be, and is, without prejudice to their asserted claims of the superiority of their assignments of shares of stock to any claim of the Commonwealth of Massachusetts against the stock attempted to be garnished, and this judgment shall not constitute an adjudication of such matters, *and all of such interveners and cross defendants shall have and retain the full right to assert any rights or claim they may have in any future proceeding.*" (R. 121-122.)

An appeal was taken only from so much of the above judgment as quashed the writ of garnishment; no appeal was taken from that part of the judgment entered by agreement and quoted above. (R. 124-127.)

A reading of that part of the judgment set out above will demonstrate that the purpose of the *agreed* judgment was to take petitioner and other parties similarly situated entirely from the purview of the garnishment proceeding. The judgment dismissed petitioner and the other parties, and pro-

vided that they should "have and retain the full right *to assert any rights or claim they may have in any future proceeding.*"

Petitioner is now prosecuting his "rights" to the pledged stock in a "future proceeding." It seems clear from the judgment that petitioner was placed by the judgment in the same position he would have occupied had no writ of garnishment ever been issued on behalf of the Commonwealth of Massachusetts. The trial court so found and held. (R. 209.)

When the writ of garnishment was issued, petitioner was, of course, interested in asserting the superiority of his claim to the stock pledged to him by Davis over the claim asserted by the Commonwealth of Massachusetts. Being impleaded in the case by the answer of the garnishee which showed petitioner's rights to be superior (R. 104-106, 115), petitioner asserted the superiority of his rights (R. 171-174). If petitioner had insisted upon it, he could in that litigation have secured an adjudication of his rights and could have gotten a judgment establishing the superiority of his rights to the pledged stock over that of the Commonwealth of Massachusetts. As the writ of garnishment was quashed, all parties to the suit realized that it would be a waste of time to litigate the questions involved insofar as the impleaded pledgees (including petitioner) were concerned; and, consequently, all parties reached the conclusion that it would be better for the pledgees, including petitioner, to be dismissed entirely from the garnishment proceeding, with the understanding that they would not be prejudiced by the proceeding in asserting their rights to their collateral *at any place and at any time.*

If petitioner's stock was not released from the garnishment by the agreed judgment, nevertheless, as the writ of garnishment was quashed and as the status quo was not maintained by the filing of a supersedeas bond, the appeal by the Commonwealth of Massachusetts from that part of the judgment quashing the writ did not keep the stock impounded under the writ and warrant respondent in refusing to make the transfer.

The only statutes bearing upon this question are Articles 2249, 2265-2268, 2270, 2275, Revised Civil Statutes of Texas, 1925, which have to do with appeals from, and the supersedeas of, trial court judgments in civil cases, and Article 4084, Revised Civil Statutes of Texas, 1925, which is the only pertinent statute having to do with garnishment proceedings.

Article 2249 provides for an appeal in every civil case. Article 2265 provides for a cost bond on appeal. Article 2266 provides for an appeal on pauper's oath. Article 2267 provides for suing out a writ of error (now abandoned).

Article 2268 provides that an appeal taken under the three preceding articles does not suspend execution of the judgment. Article 2270 provides for suspending the execution of a judgment on giving a supersedeas bond. Article 2275 provides that, if a supersedeas bond is given, execution of the judgment shall be stayed.

Article 4084 provides in part as follows:

"*From and after the service of such writ of garnishment, it shall not be lawful for the* garnishee to pay to the defendant any debt or to deliver to him

any effects; nor shall the garnishee, if an *incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest;* and any such payment or delivery, sale or transfer, shall be void and of no effect as to so much of said debt, effects, shares, or interest as may be necessary to satisfy the plaintiff's demand."

The above language is not limited as to time, and on the face of it would forever prevent a corporation from transferring any shares after a writ of garnishment had been run. It is clear, however, that the statute, properly interpreted, only prevents such a transfer *so long as the writ of garnishment is in full force and effect.*

The general rule in this and other jurisdictions is that, where a writ of garnishment is issued and then quashed, the mere taking of an appeal from the judgment quashing the writ without supersedeas does not in any way keep the writ in force, and the garnishee is under the legal duty to act, in so far as third parties are concerned, as it would be required to act if no writ of garnishment had been run.

The leading case is *Maxwell v. Bank of New Richmond*, 101 Wis. 286. The facts were these: Maxwell had run a writ of garnishment on one Simonton to reach funds belonging to the bank. The writ had been quashed and Maxwell had appealed therefrom without filing a supersedeas bond. Pending the appeal Simonton gave the funds to the bank, the owner thereof. The appeal was successful and the trial court's action in quashing the writ was reversed. Maxwell thereupon sued the bank for the funds

turned over to it by Simonton, the garnishee, Maxwell's theory being that the transfer of the funds pending the appeal was wrongful.

In holding that the defendant bank was not liable and that the transfer of the funds from Simonton to the bank was rightful the court said:

"The equitable lien in the garnishee proceedings not being continued in any way pending the appeal, or the judgment appealed from stayed, or the garnishee restrained from executing such judgment, it protected the garnishee defendant as to anything he did pursuant thereto before it was reversed.

* * *

"There can be no question but that the appeal from the judgment in favor of the garnishee did not operate as a supersedeas or stay of proceedings under such judgment, or restrain in any way the conduct of the garnishee defendant concerning the property of the principal defendant in his hands. Therefore, the reversal of the judgment on appeal did not revive the equitable lien upon such property. The whole scheme of the code evinces clearly the intent that there shall be no stay in the execution of a judgment carried to this court for review, except by a special order to that effect or the giving of a bond to protect the respondent, or both, according to statutory requirements. Contrary to the old practice, it is expressly provided that the mere suing out of a writ of error and the giving of a bond to make it effectual, shall not operate as a supersedeas: Stats. 1898, sec. 3045." (101 Wis. 288, 289.)

The general rule is very clearly laid down in *Federal Rubber Co. v. Pruett*, 55 Ariz. 390. In that case the court stated:

"The question has arisen in many states under attachment and garnishment statutes as to whether when the trial court quashes a writ of attachment or garnishment, the garnishee or the defendant may dispose of the property seized by the attachment or shown on the return to the writ of garnishment, without liability therefor, if no supersedeas bond is filed on appeal, notwithstanding that judgment on appeal may eventually be rendered against the defendant in the action, and it is very generally held that under such circumstances the liability on the writs is discharged. Maxwell v. Bank of New Richmond, 101 Wis. 286, 77 N. W. 149, 70 Am. St. Rep. 926; Stephens v. Willis, 51 S. W. 9, 21 Ky. Law Rep. 170; Hey v. Harding, 78 S. W. 136, 25 Ky. Law Rep. 1454; Koenig v. Curran's Restaurant, etc., Co., 121 Pa. Super. 201, 183 A. 451." (55 Ariz. 395-396.)

Other cases to the same effect as the cases above are: *Hot Springs Concrete Co. v. Rosamond*, 180 Ark. 690; *Stephens v. Willis*, 21 Ky. Law Rep. 170; *Loveland v. Alvord C. Q. M. Co.*, 76 Cal. 562. The last case involved an attachment proceeding, but the principles laid down are equally applicable to a garnishment proceeding.

The Texas courts follow the general rule referred to above. In *Blum v. Addington* (Sup. Ct.), 9 S. W. 82 (not reported in official reports), the Blums brought suit against the Brackneys and sued out a writ of attachment which was levied upon a stock of goods as the property of the Brackneys. Addington, as claimant of the goods, made oath and gave bond under the statute for the trial of the right of property. When this proceeding was called for trial Addington pleaded that upon motion of the defend-

ant in the original suit the writ of attachment had been quashed and the property released from the levy. Thereupon the Blums moved the court to suspend the proceedings and continue the case until a final judgment could be rendered in the first suit and until a ruling of the Supreme Court could be had upon the question of the validity of the attachment. The court refused to do this and rendered judgment for Addington.

The Supreme Court held:

"We think there was no error in the rulings and judgment of the court. Article 182 of the Revised Statutes provides that 'should the attachment be quashed or otherwise vacated, or should the judgment be for the defendant, the court shall make the necessary order restoring the property to the defendant, or discharging the claim or replevy bond, as the case may be.' It was the duty of the court, when the attachment in the original suit was quashed, to have entered an order discharging the bond of the appellee; but, if this were not done, the omission cannot affect his rights,—he not being a party to the suit in which that judgment was rendered. The legal effect must be the same. *The attachment being quashed, the jurisdiction over the property obtained by it is taken away;* and hence the plaintiff is left without any standing in the proceeding for the trial of the right of property. It would be futile to proceed to trial to determine the question whether or not the property is subject to a writ after the writ has been adjudged void in the suit in which it issued. *We find no authority in the statute for suspending and continuing the proceeding until the validity of the attachment may be determined upon appeal. When an attachment is dissolved by an interlocutory order, the dissolution, with all its consequences, takes effect at once, and, as to personal*

property, puts the parties in the same position as if no attachment had issued. It is true that, if the writ be erroneously quashed, the rule may work a hardship upon the plaintiff therein. The reversal of the judgment can afford him no redress. But this is a matter for the legislature, and it seems to us their intent is apparent. *Attachments are harsh remedies at best; the directions of the statute for obtaining them are very plainly laid down; and it may have been considered that an attaching creditor should not complain if, by reason of some failure to comply with the strict letter of the law, his writ was quashed, though erroneously, and he lost the benefit of his seizure.*" (9 S. W. 83.)

Thereafter our attachment statute was amended, and in *Kildare Lumber Company v. Atlanta Bank*, 91 Tex. 95, the Supreme Court stated:

"Before the amendment, when an attachment was erroneously dissolved, the property was immediately surrendered to the defendant, and although the plaintiff had a right of appeal upon the final disposition of the cause, the appeal, as to that matter, was without any beneficial result. The purpose and scope of the amendment was to correct this evil, and to give the plaintiff an efficacious remedy for the correction of the error, by requiring that the status of the property or fund should be preserved, or that the defendant, before taking possession, should give a replevy bond." (91 Tex. 104.)

The above cases demonstrate this: Before respondent's contention can be upheld respondent must point to some statute that kept the garnishment lien in effect after the trial court quashed the writ of garnishment issued the Commonwealth of Massachusetts. As has been stated, "the proceeding by

garnishment is purely statutory and is not known to the common law, it cannot be pushed in its operation beyond the statutory authority under which it is resorted to." *(Noyes & Fish v. Brown*, 75 Tex. 458, 461.)

Article 4084, *supra*, makes no provision for keeping the garnishment lien alive pending appeal. None of the other statutes governing garnishment proceedings (except the general statute as to supersedeas which we discuss hereinafter) provides for keeping such a lien alive pending appeal.

If respondent's contention is correct, the Commonwealth of Massachusetts has tied up petitioner's stock over a period of several years while its appeal from the trial court's judgment quashing its writ of garnishment has been and is slowly winding its way through the courts. The trial court held this could not be done. (R. 202.)

The applicable Texas law is laid down in *Willis v. Keator*, 181 S. W. 556 (Tex. Civ. App.). In that case Keator sued Whittaker and Moran on a note and to foreclose a chattel mortgage. To impound the mortgaged property, Keator caused a writ of sequestration to be issued. The mortgaged property was seized and sold under court order, and the proceeds were deposited in court. On trial of the case the sequestration was quashed; Keator was denied a recovery; and the money in court was ordered to be paid to Moran by the clerk. Keator appealed but filed only a cost bond. After the time for filing a supersedeas bond had expired, Willis, the clerk, paid the money to an assignee of Moran's.

Subsequently the judgment quashing the sequestration and ordering the fund paid to Willis was re-

versed by the Court of Civil Appeals. Upon a second trial Keator got judgment against Whittaker foreclosing his chattel mortgage.

Thereupon Keator sued Willis and the sureties on Willis' official bond for the $513.80 paid by Willis to the assignee of Moran. The court held that Willis should have paid the money to Moran's assignee, stating:

"No supersedeas bond having been filed, it was the duty of Willis as clerk to pay the funds in his hands to Moran or his assignee, Barnett, in accordance with the order of the court. R. C. S., arts. 2101, 2097; Waters-Pierce Oil Co. v. State, 106 S. W. 326." (181 S. W. 557.)

As a matter of fact, the Commonwealth of Massachusetts, if it had so desired, could have maintained the status quo pending its appeal. Under the statutes of Texas, the Commonwealth could have filed a supersedeas bond instead of an appeal bond, and the filing of such a supersedeas bond would have preserved the status quo pending the appeal.

Article 2270, Revised Civil Statutes of Texas, 1925, provides that an appellant or plaintiff in error "desiring to suspend the execution of the judgment may do so by giving a good and sufficient" supersedeas bond.

It is the contention of respondent (Brief, p. 23) that the Commonwealth of Massachusetts could not have superseded the judgment quashing its writ of garnishment because, according to respondent, that judgment was a self-executing judgment, a judgment requiring the issuance of no process for its enforcement, and, consequently, not a judgment within the

purview of Article 2270. Respondent's contention has been definitely and affirmatively answered to the contrary by the Texas Supreme Court.

In *Houtchens v. Mercer*, 119 Tex. 431, the Supreme Court stated that our statute relating to supersedeas bonds (Art. 2270) "does not except from its operation any class of judgments. . . . In our opinion what is meant by suspending the execution of the judgment under the provisions of Article 2270 is suspending the enforcement or carrying into effect of the judgment. Of course this would include judgments that require the issuance of process to enforce them as well as those *that are self-executing.*" (119 Tex. 446.)

The Houtchens case is the controlling case in Texas on this point. Many other cases such as *Bryan v. Luhning*, 106 S. W. (2d) 403 (Tex. Civ. App.), might be cited.

Respondent contends (Brief, p. 23) that the Commonwealth of Massachusetts could not have superseded the judgment quashing its writ of garnishment because the judgment was in effect "a take nothing judgment."

But what respondent overlooks is the fact that the judgment quashing the writ issued to the Commonwealth of Massachusetts changed the status quo. What that judgment did was to dissolve the writ that had theretofore been issued and to discharge the garnishee; what that judgment did was to change the status quo.

That the Commonwealth of Massachusetts could have maintained its garnishment lien in effect pending its appeal by the filing of a supersedeas bond is demonstrated by cases involving orders dissolving

temporary injunctions. The law in Texas is this: When a party secures the issuance of a temporary injunction and the temporary injunction is thereafter on motion dissolved, the party that had the injunction can supersede the order and keep the injunction in effect pending an appeal. *G. C. & S. F. Ry. Co. v. F. W. & N. O. Ry. Co.*, 68 Tex. 98; *Lee v. Broocks*, 111 S. W. 778 (Tex. Civ. App.), writ refused; *Murray v. Humphrey*, 132 S. W. (2d) 444 (Tex. Civ. App.).

The above cases are analogous to the instant case. In each of them the plaintiff, starting off with nothing, got the court to issue him a temporary injunction. Thereafter the injunction was dissolved, placing the plaintiff in the same position as he was when he started his litigation. Yet in each case it was held that the filing of a supersedeas bond superseded the order dissolving the injunction and that the injunction continued in effect pending the appeal.

Even if it be admitted for the sake of argument that the Commonwealth of Massachusetts could not have filed a supersedeas bond, respondent's contentions here are in no way helped because the fact remains that a garnishment proceeding is an extraordinary proceeding, and before garnished funds can be tied up, pending an appeal from a judgment quashing a writ of garnishment, some statute must be pointed out that so ties up the funds. Respondent has pointed to no such statute, and it cannot point to one unless it wishes to invoke the supersedeas statute.

Respondent cites *Humble Oil & Refining Company v. Andrews*, 285 S. W. 894 (Tex. Civ. App.), writ refused. That case illustrates as clearly as anything

could the false assumption underlying respondent's whole argument and the soundness of our contentions. The case referred to was a case involving an *attachment*. The amended attachment statute, Article 303, Revised Civil Statutes of Texas, 1925, provides:

"If the attachment be quashed or otherwise vacated by interlocutory judgment or order of the court, the . . . property or the proceeds of the sale thereof, if the same has not been replevied, shall remain in the hands of the officers *pending the final disposition of the main case and until it shall be finally disposed of, or until the time for perfecting an appeal has elapsed and no appeal has been perfected, when said order disposing of the property shall be carried into effect.*"

The above statute specifically provides that after the attachment is quashed the status quo shall be maintained pending an appeal. Respondent can point to no statute that preserves the status quo pending an appeal from a judgment quashing a writ of garnishment. The very case relied upon by respondent demonstrates that, before the status quo can be maintained in an extraordinary proceeding of the kind involved here, there must be some statute to maintain the status quo.

In connection with its contention that the pendency of the appeal in the garnishment proceeding tied up petitioner's stock, respondent quotes from *Commonwealth of Massachusetts v. Edgar B. Davis* (Tex. Civ. App.), opinion not yet reported (Brief, page 4.) That case involved an appeal by the Commonwealth of Massachusetts from a judgment in Davis' favor for damages in the sum of $550,000.00.

Davis was given such a judgment in the trial court for damages suffered by reason of the depreciation of his stock while it was impounded by a writ of garnishment issued in 1937 and in force until it was quashed in 1939.

The questions before the court in the above case were: (1) Was the garnishment proceeding properly quashed in October, 1939? (2) Was Davis entitled to $550,000.00 as damages allegedly caused him because his stock was impounded from 1937 until October, 1939? The court held the garnishment was properly quashed and that Davis was entitled to his damages. There was no question in the case as to the effect of the writ of garnishment *after the writ was quashed* and no question as to the effect of the appeal by the Commonwealth of Massachusetts from the judgment of the trial court quashing the writ. Hence, the court's statement that the garnishment continued in effect after the appeal was taken is mere dictum. The opinion referred to has not been passed on by the Supreme Court of Texas and has not been approved by that court. Insofar as the dictum in question is concerned, it is contrary to the holdings of the Supreme Court of Texas in the cases hereinbefore cited and discussed.

The dictum referred to is based upon the opinion of this Court in *Mackenzie v. Englehard Co.*, 266 U. S. 131. In that case this Court held that under the law of Kentucky a corporation which, with notice of an asserted lien on stock, transfers the stock, while a suit to enforce the lien is undisposed of and on appeal without supersedeas, is liable for the value of the stock to the lien holder whose lien is finally established by judgment. The Court held that the

Kentucky rule of law as to *pendente lite* controlled.

The Court further held that the Kentucky statute providing that "an appeal shall not stay proceedings on the judgment unless a supersedeas be issued" was not applicable because "there was no question . . . of any proceedings on the judgment."

That case is not in point here because the Court was construing a statute of the State of Kentucky, and not the supersedeas statute of the State of Texas. Furthermore, the Kentucky courts hold that a judgment quashing a writ of garnishment can be superseded under the statute referred to; and hold that, if no supersedeas bond is filed, the parties are placed in the same position as they would have been in had no writ of garnishment ever been issued. *Stephens v. Willis*, 21 Ky. Law Rep. 170.

That case demonstrates that the law of Kentucky is exactly the same as the law of Texas in so far as the question before this Court is concerned.

The next point we want to discuss is respondent's untenable contention that the judgment quashing the writ of garnishment issued at the behest of the Commonwealth of Massachusetts was premature; that the court should have awaited the outcome of the main case; that its failure to do so left the bond, given by the Commonwealth of Massachusetts when it secured the issuance of the writ, in full force and effect. (Brief, page 23.) We are at a loss to understand the materiality of this contention because, in the first place, the trial court's error, if any, could only be corrected on appeal. It was not the duty of respondent to voluntarily correct the error, if any, by freezing petitioner's stock on its books.

In the second place, the proposition of law asserted

is incorrect under the Texas decisions. In *Roberts v. Stoneham*, 31 S. W. (2d) 856, 857 (Tex. Civ. App.), the court says:

"While it is true that garnishment is a species of execution and ancillary to the main suit, nevertheless it involves other parties, in this instance the garnishee and the claimants of the fund, and is regarded as a separate proceeding for the purposes of appeal. It has been uniformly held that an appeal will lie from a final judgment in garnishment, independently of the action in the main case. . . . *It does not follow, however, that a final judgment may not be rendered quashing the garnishment writ and discharging the garnishee until after judgment in the main suit.* The same reasons for such holding do not exist as in the case where the judgment is against the garnishee. It might be very important to the garnishee or to some other person claiming the fund to have a speedy determination of the issue of whether or not there was a valid impounding of the fund, or whether the defendant was its true owner, and, where the holding and judgment of the trial court is to discharge the garnishee from liability, such judgment we think should be held to be final, regardless of whether there had been any judgment in the main suit. This appears to be the holding in Walton v. Bank (Tex. Civ. App.), 185 S. W. 369. See, also, 3 Tex. Jur. 109."

It is no defense to petitioner's action for damages for respondent's conversion of his stock that respondent if held liable for the conversion will thereby acquire title to the stock because (1) respondent did not plead any such defense, and (2) the law of Texas permits a corporation to purchase its own stock.

Respondent contends that the judgment in this case forces it to purchase its own stock. For this reason respondent asserts that it should not be held liable in conversion, but that a softer remedy should be forced on petitioner—that is, that petitioner should be left to a mandamus proceeding to force the transfer. (Brief, pp. 26-28.) Respondent had the opportunity to prevent any suit for conversion by transferring the stock when petitioner presented it to respondent duly endorsed for transfer, but respondent refused to act, and it now says that petitioner should not be permitted to avail himself of the remedy provided by the law of Texas—that is, a recovery against respondent of his damages for the value of the stock converted.

The record shows that the defense now asserted by respondent is an afterthought. Respondent did not plead that to hold it liable for conversion would force it to purchase its own stock to the prejudice of its creditors (R. 6-15); and that defense, if a defense, is one that respondent should have pleaded below. Furthermore, respondent offered no evidence to show that its creditors would be in any way prejudiced by a judgment for conversion in favor of petitioner. The court's finding that respondent's common stock was worth $8.05 per share is necessarily a finding, if any was needed, that respondent had assets that were more than ample to take care of its creditors who would not therefore be prejudiced or injured by respondent's purchasing some of its own stock.

And finally, under the law of Texas, a corporation can purchase its own stock. *San Antonio Hardware Co. v. Sanger*, 151 S. W. 1104 (Tex. Civ. App.), writ

refused; *Rowan v. Texas Orchard Development Co.*, 181 S. W. 871 (Tex. Civ. App.), writ refused.

We submit that the trial court correctly laid down the law governing this question. (R. 203-204.)

Conclusion

We respectfully submit that the petition for writ of certiorari should be granted.

Attorneys for respondent are Messrs. Ike D. White and H. Grady Chandler, both of Austin, Texas. Copies of this brief have been given these attorneys.

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